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No.

Supreme Court, U.S.
FILED

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

ALFONZO E. WILSON

Petitioner,

vs.

STATE OF TENNESSEE

Respondent.

**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
OF THE STATE OF TENNESSEE**

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SUPREME COURT, U.S.

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QUESTIONS PRESENTED

I. Whether the warrantless search of the interior of a vehicle for narcotics must be supported by probable cause?

II. Whether an uncorroborated informant's tip, unsupported by any reliability or basis of knowledge evidence, can form the substantial basis for probable cause under the totality of the circumstances test?

III. Whether an informant's tip must be supported by some evidence of reliability before it can be used as the basis for finding reasonable suspicion to stop an automobile?



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**PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF CRIMINAL APPEALS
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The petitioner, Alfonzo E. Wilson, respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the Tennessee Court of Criminal Appeals entered in this proceeding on August 13, 1987.

OPINIONS BELOW

The opinion of the trial court is unreported and is reprinted as Appendix A, p. 1a, *infra*. The opinion of the Tennessee Court of Criminal Appeals is also unreported and is reprinted as Appendix B, p. 4a, *infra*. The denial of hearing by the Tennessee Supreme Court is unreported and is reprinted as Appendix C, p. 8a, *infra*. The transcript of the suppression hearing is reprinted as Appendix D, p. 9a, *infra*.

JURISDICTION

The denial of hearing by the Supreme Court of Tennessee was entered on November 9, 1987, and this petition for Certiorari was filed within sixty (60) days of that date. The United States Supreme Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

The three questions to be decided arose out of a suppression hearing and involve the interpretation of the fourth amendment in the auto search context. The first issue is whether a search of the interior of a car for narcotics must be supported by probable cause or only the lesser knowledge standard of reasonable suspicion. The second and third issues are whether on the facts the probable cause or reasonable suspicion standard is met. The Tennessee Court of Criminal Appeals ("Appeals Court") held that only reasonable suspicion is necessary to support the search of the interior of an automobile, and that that burden was met by a showing of articulable facts.

This case involves three defendants, defendant Wilson (the petitioner), defendant Shearon (the alleged purchaser of the narcotics seized from the car), and defendant Meadows (the owner of the house from which the narcotics were allegedly purchased). Only defendant Wilson's fourth amendment claim is before this court.

Sergeant James McWright ("McWright"), the arresting officer, was the only witness to give testimony concerning probable cause. He testified that he relied on the informants tip, corroboration of that tip, and the general reputation of the defendants to develop probable cause for the search of the car.

McWright testified that Agent Jerry Strange of the Tennessee Alcoholic Beverage Commission told him that Robert Meadows was in possession of a large amount of cocaine, and that he was selling this cocaine from his home primarily to female ex-convicts. (App. D at 14a). McWright testified that Strange told him that the *modus operandi* for the crime was that the women would come to the rear of Meadow's house, blow the horn, and Meadows would come out and motion for them to come inside. (App. D at 14a). McWright never attempted to establish Strange's basis of knowledge or to find out who his source was to test the source's credibility or basis of knowledge. The State introduced no testimony at the suppression hearing to establish these vital facts. No evidence of first hand knowledge of the presence of drugs or drug transactions was ever produced at the suppression hearing.

Acting on Jerry Strange's tip the Nashville Police put Meadow's house under surveillance on April 18, 1985 to corroborate the tip. (App. D at 13a). During the entire day the officers observed only three or four cars come and go carrying one male and two or three females. Each of these cars either blew their horn upon arrival or waited for Meadows to come out to the car. (App. D at 14a). Meadows would then either come out and escort them in or would talk to them at the car and then the car would leave. (App. D at 14a). Meadows kept a dangerous dog on the premises. (App. D at 14a). All of this activity was totally innocent and gave no indication of drug trafficking. (App. B at 6a). No evidence was ever introduced to show that any of these people were ex-convicts or were associated with narcotics in

any way. No evidence of narcotics trafficking was observed by the officers. (App. D at 14a).

When defendant Shearon arrived she honked her horn and Meadows motioned her inside. She went in without a bag or purse and with nothing in her hands. She stayed five minutes and then left carrying nothing. The officers on the scene did not recognize her. (App. D at 15a). Again all of this activity was totally innocent. As Shearon left Meadow's house the police ran the plate on the car she was driving and found that it was registered to defendant Wilson's wife. (App. D at 15a). McWright, who heard the plate identification over the radio, testified that at this point he assumed that the driver was Shearon based on her past association with Wilson. (App. D at 16a). McWright based this association on a search warrant executed ten years ago by another officer. (App. D at 18a). McWright was not sure of this connection. (App. D at 18a). In fact, Shearon has never been searched for narcotics pursuant to a warrant, and has never been arrested or convicted of possession or sales of narcotics. (App. D at 23-24a). McWright testified that she told him she dealt drugs. (App. D at 24a).

After the plate was run Shearon picked up Wilson, the petitioner, at a closed-down gas station and entered an interstate highway. (App. D at 16a). McWright pursued and caught up with Shearon and Wilson, who was now driving, and made a positive identification of them. (App. D at 16a). McWright knew that Wilson had been convicted of selling drugs. (App. D at 13a). At this point McWright decided to stop Wilson. (App. D at 22a).

McWright stopped the car. (App. D at 18a). McWright's partner, Officer Luna, retrieved a brown paper bag from the passenger side of the car which contained two plastic bags containing 50 grams of cocaine. (App. D at 18-19a). It was never established where the bag was located. (App. D at 28a). It could have been on the seat, on the floorboard or

under the seat. (App. D at 18a and 25a). The Officers then arrested Wilson and Shearon.

McWright further testified that he pulled the car over to "get the drugs out I felt sure was in it." (App. D at 25a). He also testified that had the defendants not been in the class of what he calls "drug dealers" he would not have pulled them over. (App. D at 25a). The State offered no other proof.

The trial court in this case found that the arresting officers lacked probable cause to search the car when they stopped Wilson and suppressed the bag of cocaine seized from the car from being entered into evidence against him.¹ (App. A at 1a). The Tennessee Court of Criminal Appeals ("Appeals Court") reversed the trial court. The Appeals Court did not reverse by holding that probable cause existed to search the car.² Instead, the Court *reduced* the *knowledge requirement* to search the interior of the car by holding that both the stop (seizure) and search of the car were constitutionally valid if the stop was supported by reasonable suspicion citing *Delaware v. Prouse*, 440 U.S. 648, 654-55, 99 S.Ct. 1391, 1396-97, 59 L.Ed.2d 660 (1979) and *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 367 (1979). (App. B at 6a). The Court then held that the state carried its burden of demonstrating reasonable suspicion by showing specific and articulable facts. (App. B at 7a).

¹ The bag of cocaine was allowed into evidence against defendant Meadows, who, it is alleged, sold the drugs from his home.

² None of the courts below found that probable cause to search the car existed. The trial court found that probable cause to search did not exist. The Appeals Court did not reach the issue since it held that only reasonable suspicion was needed to search the car. (App. B at 6a).

REASONS FOR GRANTING THE WRIT

I.

It Is Imperative That The Court Decide This Case To Prevent The Further Dilution Of Fourth Amendment Rights By The Tennessee Court Of Criminal Appeals Which Has Effectively Extended *Michigan v. Long* and *New York v. Class* To Narcotics Searches By Holding That The Rule In *Delaware v. Prouse*, Which Allows The Stop Of A Car Based Upon A Reasonable Suspicion Of Violation Of Law, Eliminates The Need For A Separate Finding Of Probable Cause To Search The Interior Of The Car For Narcotics.

The rule laid down in *Delaware v. Prouse* is that police may stop an automobile based upon a reasonable suspicion of violation of law to check the vehicle's registration and the driver's license. *Id.* at 663. The Appeals Court extended *Prouse* to allow a full blown search of the interior of an automobile, without a finding of probable cause to search, as long as there was reasonable suspicion to stop the car. (App. B at 6a).

The holding of the Appeals Court in this case is plainly at odds with a long line of Supreme Court precedents requiring probable cause to search the interior of an automobile. *Carroll v. United States*, 267 U.S. 132 (1925); *United States v. Ross*, 456 U.S. 798, 809 (1982).³ This is not a case in which one of the exceptions to the probable cause require-

³ "[t]he exception to the warrant requirement established in *Carroll* . . . applies only to searches of vehicle that are supported by probable cause." "The Court in *Carroll* emphasized the importance of the requirement that the officers have probable cause to believe that the vehicle contains contraband." *Id.* at 807-808. Accord *Almeida-Sanchez v. United States*, 413 U.S. 266, 269 (1973) ("automobile or no automobile, there must be probable cause for the search" (footnote omitted)). See generally *Michigan v. Long*, 463 U.S. 1032 (1983) (Brennan, J., dissenting).

ment for auto searches applies.⁴ Since no recognized exception to the probable cause requirement applies in this case the Appeals Court's decision is plain error and should be reversed.

It is necessary to decide this case to correct the Appeals Court's grave constitutional error and enforce the "narrow scope" of the exception to the probable cause requirement recognized in the *Terry* and *Prouse* cases. See *Ybarra v. Illinois*, 444 U.S. 85, 93 (1979) ("The *Terry* case created a narrow exception to the requirement of probable cause, an exception whose 'narrow scope' this court has been careful to maintain.") Certainly the decision in this case steps outside of even the most liberal reading of the *Terry* decision which has up to now been restricted to limited detentions, a limited search for weapons and a limited search for a Vehicle Identification number.⁵ This case allows a highly intrusive warrantless vehicle search without probable cause where the state interest is no higher than the normal state interest in preventing crime. In the interests of uniformity and supremacy of constitutional law the Court cannot let this aberration stand.

⁴ *Michigan v. Long*, 463 U.S. 1032 (1983) allows searches for weapons based upon a reasonable suspicion of the presence of weapons. Here there is no fear of the presence of weapons. The officer testified he stopped the car to search for drugs. *New York v. Belton*, 453 U.S. 454 (1981) allows a full search of the interior of the car incident to a lawful arrest. Here there was no arrest until after the search was conducted. The only court to consider the matter found that there was no probable cause to arrest before the drugs were found.

⁵ *Michigan v. Summers*, 452 U.S. 697 (1981) (detention at home on less than probable cause held reasonable); *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) (border patrol stops on less than probable cause held reasonable); *Delaware v. Prouse*, *supra* (investigatory stops of autos based on reasonable suspicion of violation of law held reasonable); *Terry v. Ohio*, *supra* (investigatory detention held reasonable); *United States v. Place*, 462 U.S. 698 (1983) (investigatory detention of luggage held reasonable).

The only way to validate the search in this case is for the Court to find a new exception to the probable cause requirement through the use of the fourth amendment reasonableness balancing process recognized in *Terry v. Ohio*, 392 U.S. 1 (1968). This presents the issue of whether an exception should be made to the probable cause requirement for narcotic searches of automobiles.

While the Court has construed the *Terry* reasonableness test to allow limited detentions (*seizures*) founded on less than probable cause in five circumstances (*see supra* note 5), the court has allowed limited *searches* founded on less than probable cause in only two circumstances. The first is when officer safety is implicated. E.g., *Terry v. Ohio, supra* and *Michigan v. Long*, 463 U.S. 1032 (1983). The second is to make a limited search for a Vehicle Identification Number. *New York v. Class*, 475 U.S. 106 (1986). The Appeals Court allowed a search in this case founded upon less than probable cause for the express purpose of "getting the drugs out of the car." In this case no officer safety concerns were implicated, and the search was highly intrusive. Thus, the holdings in *New York v. Class, supra* and *Michigan v. Long, supra* do not by their terms justify the search. In fact, recognizing this narcotics exception to the probable cause requirement for auto searches would extend the holdings in *New York v. Class, Michigan v. Long* and *United States v. Place*, 462 U.S. 696 (1983).

The Appeals Court's holding extends *Michigan v. Long* which allowed the search of the interior of a car based upon reasonable suspicion of the presence of weapons relying on *Terry v. Ohio*, and the officer safety rationale. The court's holding also extends *New York v. Class* which allowed the search of a car for the Vehicle Identification Number under a *Terry* reasonableness balancing process because there was no privacy interest in the VIN, *Id.* 475 U.S. at 114, and because the intrusion was minimal. *Id.* 475 U.S. at 118. Finally, this holding extends the limited narcotics exception recognized in *United States v. Place* which allowed a seizure

of luggage based upon a reasonable suspicion that it contained narcotics relying on a reasonableness balancing test, and "the enforcement problems associated with the detection of narcotics trafficking and the limited intrusion that a properly limited detention would entail." *Id.* 462 U.S. at 698. See *Florida v. Royer*, 460 U.S. 491, 513 (1983) (Blackmun, J., dissenting) ("Given the strength of society's interest in overcoming the extraordinary obstacles to the detection of drug traffickers, such conduct should not be subject to a requirement of probable cause.")

The Court should grant the Writ in this case because its facts offer an excellent opportunity to draw bright line limits on the advancing *Terry* balancing cases which are limiting Fourth Amendment rights. Cf. *New York v. Class*, *supra*, *Michigan v. Long*, *supra* and *United States v. Place*, *supra*.

First, this case may be decided so as to delineate the contours of *New York v. Class*, 475 U.S. 106 (1986). The Court needs to decide whether the *Terry* balancing process used in *Class* is to be used in all auto search cases, and if not, when is it to be used? If the balancing process is to be used here, does it weigh in favor of the state for highly intrusive searches for narcotics such as in this case? Cf. *United States v. Place*, *supra* (limited detention to check for the presence of narcotics held reasonable due in part to special enforcement problems associated with narcotics) and Justice Blackmun's dissenting opinion in *Royer*, *supra*. See also *Class*, 475 U.S. at 125 (Brennan, J., dissenting) and 475 U.S. at 131 (White, J., dissenting).

Second, this case presents the opportunity for the Court to draw a bright line expressly limiting *Michigan v. Long* to the officer safety rationale which supports it. This would help avoid the dangers of a broad reading of that opinion by the lower courts. See *Id.* 463 U.S. at 1056-1065 (Brennan, J., Dissenting). In this case there is no concern for officer safety. The officers testified they stopped the car "to get the drugs out."

Finally, the Court may use this case to limit the extension of *Terry* principles to narcotics seizures based on reasonable suspicion of the presence of narcotics found in *United States v. Place*. The Court could draw a bright line with this case limiting the exception in *Place* to limited detentions thus preventing its extension to more intrusive searches and seizures for narcotics such as the vehicle search in this case.

II.

The Court Should Decide This Case To Further Delineate The Limits Of The "Totality of The Circumstances" Probable Cause Standard Recognized In *Illinois v. Gates* By Holding That In This Case The Corroboration Of The Informant's Tip Was Not Enough To Find A "Fair Probability" That Criminal Activity Was Afoot So As To Establish A "Substantial Basis" For Probable Cause To Search The Vehicle.

If the Court agrees that the correct standard for the search of the car in this case was probable cause it becomes necessary to determine whether probable cause existed. In *Illinois v. Gates*, 462 U.S. 213 (1983) the Court held that qualitatively the evidence supporting probable cause derived from an informant's tip must be viewed in unison and articulated the "totality of the circumstances" test. In speaking to the quantity of evidence needed to find probable cause from an informant's tip the Court held that:

"[i]t is enough that there was a fair probability that the writer of the anonymous letter had obtained his entire story either from the [defendant's] or someone they trusted. And corroboration of major portions of the letter's predictions provides just this probability. It is apparent, therefore, that the judge issuing the warrant had a 'substantial basis for...conclud[ing]' that probable cause to search the [defendant's] home and car existed." *Id.* at 246.

In *Massachusetts v. Upton*, 466 U.S. 727 (1984) the Court held that the tip in that case was sufficiently corroborated to meet the substantial basis test articulated in *Gates* because the informant knew enough detailed information that it tended to show that she had personal knowledge of the criminal activity. Also, the information she gave fit together with what the police already knew at the time. *Id.* at 733-734. At this point the Court had decided two cases upholding a search based upon an informant's tip and its corroboration under the 'totality of the circumstances' approach adopted in *Gates*. The facts of the instant case are sufficiently distinguishable from the facts of *Gates* and *Upton* to provide a meaningful guide for the type of case in which an informant's tip is not sufficiently corroborated to provide a 'substantial basis' for a finding of probable cause.

In this case Officer McWright made no effort to establish the basis of Jerry Strange's knowledge concerning Meadow's alleged drug trafficking. McWright could have questioned Strange concerning the nature, source, timing, reliability and veracity of his tip but chose not to corroborate the story. There is no way to know the source of Strange's information let alone the source's veracity and basis of knowledge. Thus the only way to establish probable cause from the tip, even under the totality of the circumstances test, is by corroborating the details of the tip to show that the information is more than the bare conclusions of others and at some point rests upon ascertained facts. *Gates*, 462 U.S. at 239.

In both the *Gates* and the *Upton* case the detail provided by the informant showed that the informant had first-hand knowledge of illegal activity or had been in contact with someone with first-hand knowledge of the illegal activity. *Gates*, 462 U.S. at 246; *Upton*, 466 U.S. at 733-734. The details provided in both cases described activity which even though it appeared innocent was suspicious. In this case the facts provided by the informant cannot even be described as details. The tip was that Meadows was in possession of a large amount of cocaine. That he was dealing with women

who were ex-convicts. That the women would pull up in the rear of the house and honk their horns. And that Meadows would then motion them inside.

The only illegal act alleged in this tip is the possession of cocaine which is a totally conclusory allegation. Moreover, the *modus operandi* information lends no credibility to the cocaine allegation. These allegations could be made by anyone casually passing by and watching Meadows talking to someone in a car in his backyard. Honking the horn to notify someone of your arrival is no surprise when visiting a home where a large and potentially dangerous dog is kept. It is self evident that the informant's tip coupled with this paltry corroboration is insufficient to constitute probable cause. See *Nathanson v. United States*, 290 U.S. 41 (1933) and *Aguilar v. Texas*, 378 U.S. 108 (1964) (wholly conclusory statements do not provide a substantial basis to establish probable cause) cited in *Gates*, 462 U.S. at 239. See *Id.* at 277-278 (Brennan, J. dissenting) (must supply underlying facts or circumstances to support hearsay conclusions). None of the facts of this case show any special knowledge on the part of the informant to show that he or she had access to inside information as in *Gates* and *Upton*.

In addition to the fact that the corroborable facts in this case did not tend to show drug trafficking, the fact that these details were never corroborated also lowers the reliability of the informant's tip. The surveillance officers saw at most five cars during their surveillance on April 18, 1985. Up to one-half of the occupants of these cars could have been male. There was no evidence that any of these people were ex-convicts or had any association with drugs whatsoever. Not all, if any, of the visitors entered the house. There was no evidence of any drugs, or anything else changing hands. The only part of the tip which was corroborated was that each visitor pulled up to the back of the house. This case does not even begin to approach *Draper v. United States*, 358 U.S. 307 (1959) in which the complete tip was corroborated down to the clothes the defendant was wearing.

The tip in this case lacks both basis of knowledge support and veracity support. No support was provided by direct testimony of an informant with first or even second hand knowledge. The detail of the tip and the corroboration of the tip with wholly innocent public activity cannot suffice to lend credibility to the hearsay in this case. Can probable cause be found under the totality approach without "some showing of facts from which an inference may be drawn that the information is credible and that [this] information was obtained in a reliable way"? *Gates*, 462 U.S. at 273 (White, J., dissenting).

It is the State's position that the uncorroborated informant's tip suddenly becomes probable cause when a person with the reputation for drug dealing appears on the scene. The Court should grant the Writ in this case to consider the effect of a prior criminal record on an informant's tip under the 'totality of the circumstances' approach.

The State contends that once Officer McWright realized that it was Shearon in the car, and that she had picked up Wilson after leaving Meadow's house, probable cause developed for a search. Although this development might heighten the officer's suspicion, this is true whenever an officer sees an ex-convict. The question is whether this rises above mere suspicion to a substantial basis under the 'totality of the circumstances' approach. In *Sibron v. New York*, 392 U.S. 40 (1968) the Court found that "[t]he inference that persons who talk to narcotics addicts are engaged in the criminal traffic in narcotics is simply not the sort of reasonable inference required to support an intrusion by the police on a person's personal security." *Id.* at 70.

The Court is left with two wholly inadequate stems of evidence to find probable cause from; an uncorroborated tip and the general reputation of Shearon and Wilson. Can these be fit together to form a whole and find probable cause without "eviscerating the probable cause requirement"? *Gates*, 462 U.S. at 272 (White, J., dissenting) and 462 U.S. at 290 (Brennan, J., dissenting).

III.

The Court Should Decide This Case To Articulate Whether The Reasonable Suspicion Standard Reduces The Probable Cause Standard Only By Allowing A Stop Based On A Lesser Quantity of Information Than That Required By Probable Cause Or Whether It Also Allows A Stop Based On Information Which Is Less Reliable Than That Required By Probable Cause.

The trial court held that no probable cause existed for the search of Wilson's vehicle. The Appeals Court held that reasonable suspicion existed for the stop and search of Wilson's vehicle. As discussed in part II, *infra* the reliability and basis for the tip in this case was never established by seeking out and questioning the source of the information or by corroboration of the tip itself. The evidence of Wilson's past involvement with narcotics is of little value here to establish reasonable suspicion because allowing an inference from this fact that he is trafficking drugs whenever he is seen would make him subject to shake down stops continuously.

The issue then is whether the police can take unsubstantiated tips like the one in this case and make investigatory stops of ex-convicts? This case stands for the proposition that any tip, regardless of its reliability, may form the articulable facts for the basis of reasonable suspicion to stop an ex-convict.

The quantity of proof to conduct an investigatory stop under *Terry* and its progeny is already very low. Witness *Adams v. Williams*, 407 U.S. 143 (1972) in which an investigatory frisk of a man sitting in his car in a high-crime area at night was sustained solely on the strength of a tip that the man "was carrying narcotics and had a gun at his waist." *Id.* at 415. In *Terry* the reasonable suspicion developed from the officer's own observations. In *Adams* the search was based on an informant's tip, but the Court still upheld it as

based upon reasonable suspicion because the informant was highly reliable even though no basis was articulated for the informants knowledge. The Court said:

"we believe that [the officer] acted justifiably in responding to his informant's tip. The informant was known to him personally and had provided him with information in the past. This is a stronger case than obtains in the case of an anonymous telephone tip. The informant here came forward personally to give information that was immediately verifiable at the scene." *Id.* at 146.

In Wilson's case there is no reliability or basis of knowledge evidence or corroboration of the tip. There is also no evidence of where or how the tip originated. The tip is hearsay of the worst kind. Allowing low reliability evidence of this type to constitute reasonable suspicion is far more threatening to individual liberty than just reducing the quantity of information required to search.

If reliability is diluted then the requirement of specific articulable facts becomes wholly illusory. If there is no substantial basis for believing that the facts exist then whether they are specific and articulable is a moot point. The Court should address this problem by granting the Writ in this case to articulate a requirement for reliability in reasonable suspicion analysis.

CONCLUSION

For the reasons set forth above the petitioner respectfully requests that a Writ of Certiorari issue to review the judgment and opinion of the Tennessee Court of Criminal Appeals to determine: whether the unreliable evidence proffered can suffice as the articulable facts for finding reasonable suspicion; and whether the uncorroborated informant's tip constitutes a substantial basis for finding probable cause under the totality of the circumstances test; and whether probable cause or reasonable suspicion was the correct standard for the search of the vehicle.

Respectfully submitted,

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APPENDIX

APPENDIX A

**IN THE CRIMINAL COURT FOR
DAVIDSON COUNTY, TENNESSEE
DIVISION III**

December 16, 1985

Crim/Ct No. 85-S-1330

**Hon. A. A. Birch
Judge.**

State of Tennessee

vs.

**Alfonzo Emmanuel Wilson
and Janet Lee Campbell Shearon**

For Plaintiff/Appellant:

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For Defendant/Appellee:

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Nashville, TN 37201**

**Thomas Jay Norman
Attorney for Shearon
Nashville, TN 37201**

ORDER

This cause was heard on the defendant's motion to suppress the evidence, the testimony of witnesses, statements and argument of counsel, and upon the entire record, from a consideration of which the Court is of the opinion and finds as follows:

1. On the 18th day of April, 1985, a search warrant was issued and executed on the defendant's premises, yielding large quantities of controlled substance, paraphernalia, and currency.

2. The affidavit articulates the following as probable cause:

A. Information obtained from an agent of a Tennessee law enforcement agency that the defendant was in possession of a large amount of cocaine, was selling it in one ounce packets to white females who exhibited a certain pattern of conduct in making the alleged transactions;

B. This 'pattern' was observed by surveillance of the defendant's premises, and the 'modus operandi' was confirmed with regard to numerous white females;

C. One of the observed females was recognized as one known to be involved in drug traffic;

D. This female was observed to proceed to a location some distance from defendant's premises (but in the same general area), stop and take on a passenger;

E. The passenger was one known to be involved in drug traffic;

F. A search of the car occupied by the two persons revealed one-ounce packets of cocaine.

The Court concludes that the matters in the affidavit,

together will all of the other circumstances, constitute substantial probable cause for the issuance of the search warrant.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED by the Court as follows:

1. That the motion to suppress the evidence seized in execution of the search warrant, filed by the defendant Meadows, be, and is hereby, overruled.

2. That the motion to suppress the evidence seized as a result of the search of the car driven by defendant Campbell and in which defendant Wilson was a passenger is, hereby, granted, and the evidence is suppressed as against defendants Campbell and Wilson only.

IT IS SO ORDERED.

This the 16th day of December, 1985.

/s/ A. A. Birch, Judge

APPENDIX B
IN THE COURT OF CRIMINAL APPEALS
OF TENNESSEE
AT NASHVILLE

August 13, 1987

Crim/Ct A No. 86-187-III
Davidson County
Hon. A. A. Birch
Presiding Judge.

State of Tennessee

vs.

Alfonzo Emmanuel Wilson
and Janet Lee Campbell Shearon

For Plaintiff/Appellant:

W. J. Michael Cody
Att. General & Reporter
Nashville, TN 37219

Albert L. Partee, III
Asst. Attorney General
Nashville, TN 37219

Richard A. Fisher
Asst. Dist. Att. Gen.
102 Metro Courthouse
Nashville, TN 37201

For Defendant/Appellee:

David Vincent
Attorney for Wilson
Nashville, TN 37201

Thomas Jay Norman
Attorney for Shearon
Nashville, TN 37201

O P I N I O N

In September, 1985, the Davidson County Grand Jury indicted Alfonzo Emmanuel Wilson and Janet Lee Campbell Shearon for the possession of more than 30 grams of cocaine for resale. Both defendants filed motions to suppress the evidence. Following an evidentiary hearing, the trial court granted these motions. The state appeals the decision pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure.

At the evidentiary hearing, James McWright, sergeant-investigator with the Metropolitan Police Department, testified that Agent Jerry Strange of the Alcohol Beverage Commission informed him that Robert Meadows, a co-defendant not involved in this appeal, was selling cocaine out of his home. Strange further described to McWright the *modus operandi* for the drug sales. Bases on this operation, McWright set up a surveillance of Meadows' residence.

During the surveillance of Meadows' house, McWright observed an unrecognizable female drive to the back door in an identifiable automobile and enter Meadows' house. She stayed five minutes and then left in the same vehicle. McWright was informed by other officers following the female's automobile that she had stopped at a street corner and picked up a black male. From hearing the broadcast to the other officer's license check, plus his knowledge of the defendants, McWright reasoned the black male was defendant Wilson and the woman was Shearon. He knew that Wilson and Shearon were associates.¹

McWright then drove and located the defendants' automobile in traffic. He was able to identify both defendants from his vantage point at the rear of their vehicle. He advised the other officers that the suspect would probably leave the interstate at Trinity Lane and they did. At that time McWright stopped the defendants because he considered there was

¹The automobile was registered in Wilson's wife's name.

probable cause to make a search. A paper sack containing two packets of approximately two ounces of cocaine was recovered from the passenger's side of the car.

On cross-examination, McWright testified that Shearon left Meadow's home appearing to be empty handed. She carried no visible paper sack or purse. He conceded that her actions appeared to be innocent during the time he observed her. He testified that four other individuals had visited Meadows' house prior to defendant Shearon's visit, yet none of the other four were stopped. McWright also testified that his purpose in stopping the vehicle was 'to get the drugs out of the car, which I felt sure was in it.' He further admitted that had the two not been in the class of what he called drug dealers he would not have stopped them.

There was no other material evidence offered at the hearing.

Subsequent to the hearing, the trial judge granted the motions to suppress the evidence as to Wilson and Shearon, but overruled Meadows' motion to suppress. When the evidence does not preponderate against the trial court's findings of fact, such findings are binding upon this Court. *State v. Foote*, 631 S.W.2d 470, 472 (Tenn. Crim. App. 1982). However, it is the opinion of this court that the evidence in the present case preponderates against the trial court's findings.

This case turns on the question of whether Officer McWright had a reasonable suspicion supported by specific and articulable facts to justify his stop of the defendant's automobile. See *Delaware v. Prouse*, 440 U.S. 648, 654-55, 99 S.Ct. 1391, 1396-97, 59 L.Ed. 2d 660 (1979), *State v. Foote*, supra. This reasonable suspicion must be based on objective facts. *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 367 (1979). Among the factors which go to determine the existence of reasonable suspicion in vehicular stop cases are the characteristics of the area, the driver's behavior and the aspects of the vehicle. *Hughes v. State*, 588 S.W.2d

296, 306 (Tenn. 1979). The burden is on the state to show reasonable suspicion. *State v. Cross*, 700 S.W.2d 576, 577 (Tenn. Crim. App. 1985). This court is of the opinion that the state carried its burden with articulated facts.

The state issue has merit, therefore, the judgment of the trial court is reversed. The case is remanded to the trial court for trial upon the merits.

/s/ Allen R. Cornelius, Jr., Judge

/s/ Joe D. Duncan, Judge

/s/ Lloyd Tatum, Special Judge

APPENDIX C
IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

November 9, 1987

Crim/Ct A No. 86-187-III
Davidson County
Hon. A. A. Birch
Presiding Judge.

State of Tennessee

vs.

Alfonzo Emmanuel Wilson
and Janet Lee Campbell Shearon

For Plaintiff/Appellee:

W. J. Michael Cody
Att. General & Reporter
Nashville, TN 37219

Albert L. Partee, III
Asst. Attorney General
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Richard A. Fisher
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For Defendant/Appellant:

David Vincent
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Nashville, TN 37201

Thomas Jay Norman
Attorney for Shearon
Nashville, TN 37201

ORDER

Upon consideration of the application for permission to appeal and the entire record in this cause, the Court is of the opinion that the application should be denied.

PER CURIAM

APPENDIX D
IN THE CRIMINAL COURT OF DAVIDSON COUNTY
AT NASHVILLE, TENNESSEE

November 15, 1985

Crim/Ct No. 85S-1330

Hon. A. A. Birch

Presiding Judge.

State of Tennessee

vs.

Alfonzo Emmanuel Wilson
and Janet Lee Campbell Shearon

For Plaintiff/Appellee:

Richard A. Fisher
Asst. Dist. Att. Gen.
102 Metro Courthouse
Nashville, TN 37201

For Defendant/Appellant:

David Vincent
Attorney for Wilson
Nashville, TN 37201

Thomas Jay Norman
Attorney for Shearon
Nashville, TN 37201

TRANSCRIPT OF THE EVIDENCE
Motion to Suppress

The Court: Is this the same case that Mr. Yarbrough was here on today?

Gen. Fisher: Yes, Your Honor.

The Court: Are there different issues involved or what?

Mr. Vincent: Your Honor, there are two companion issues. Mr. Meadows and these defendants filed motions to sever. Mr. Meadows filed a motion to suppress the evidence, and based upon the search warrants we filed a motion to suppress the evidence.

The Court: Are the facts different?

Mr. Vincent: Yes, sir, the facts are different.

The Court: All right, I take it we can proceed on your case and your case without granting a severance at this point?

Gen. Fisher: Without what, Your Honor?

The Court: Without granting a severance or without hearing a severance—

Gen. Fisher: Yes. Your Honor, it's actually going to involve the same witnesses and the same facts would have to be presented to the Court on both cases.

Mr. Norman: I deny that.

Mr. Vincent: What happened here in this situation is the Meadows' arrest took place two or three hours after this arrest. Our parties were not on the scene or involved at all in the Meadows' arrest.

The Court: Based on what Mr. Yarbrough said this morning, I guess we will proceed if the State is ready. Is the State ready?

Gen. Fisher: Your Honor, we erroneously sent the search warrant downstairs when we concluded the file in the Meadows' case. I will have to run downstairs and get the file; otherwise the State is ready.

Mr. Vincent: Our issues don't involve the search warrant.

Gen. Fisher: It involves part of the file, Your Honor, and it does involve the facts that are alleged in the search warrant.

The Court: I will give you a change to get whatever you need.

Gen. Fisher: We can go ahead and proceed, Your Honor, and Gen. Komisar will go get the file. Call Sergeant McWright.

The Court: Step around.

Mr. Vincent: I would ask the witnesses to be separated.

The Court: All right, the Rule has been asked for. Please raise your right hand and be sworn.

(Whereupon, the witness was duly sworn, after which the following proceedings were had:)

The Court: Have a seat, please.

STATE'S PROOF

James McWright was called and being duly sworn was examined and testified as follows:

DIRECT EXAMINATION

BY GEN. FISHER:

Q State your name and your occupation, please sir.

A James McWright; I am a sergeant-investigator with the Metropolitan Police Department assigned to the vice control narcotics division.

Q How long have you been assigned to the vice control narcotics division, Sergeant?

A Approximately 10 years.

Q And during that period of time have you had many, many occasions to participate in drug-related investigations?

A Yes, sir, I have.

Q Have you yourself worked undercover and been in charge of undercover operations and individual undercover buys?

A Yes, sir, I have.

Q Let me ask you if you were personally acquainted with these two defendants here?

A Yes, sir, I have known them.

Q How long have you known the defendant Wilson?

A I met Mr. Wilson when I was in patrol probably about 11 or 12 years ago.

Q What was the nature of that meeting; was it drug-related?

Mr. Vincent: Objection, if Your Honor please; that has nothing to do with this case.

The Court: Overruled; go ahead.

The Witness: No, sir, at that particular time it was a traffic stop.

Q (By Gen. Fisher) Let me ask you, are you familiar with his reputation for drug dealings?

A Yes, sir, I am.

Q What is that familiarity based on?

The Court: Excuse me a minute. You represent Janet Shearon Wilson?

Mr. Norman: Janet Shearon Campbell, Your Honor.

The Court: All right, I don't see a suppression motion for you; do you have one filed?

Mr. Norman: I filed it along with the motion to sever, Your Honor.

The Court: All right, go ahead.

Q (By Gen. Fisher) Now, what do you base your familiarity on; do you have specific instances where you are aware he has been involved in drug dealings?

Mr. Vincent: If Your Honor please, of course, we could call out the record if we wanted to. I think counsel knows that if he wants to prove reputation he has to prove reputation and not specific instances.

The Court: All right, that is for a Jury trial if we are trying to determine guilt or innocence. This is on a motion. Let's go.

Q (By Gen. Fisher) Go ahead, sir.

A Yes, sir, I have been involved with Mr. Wilson on drug investigations in the past, both when he was involved in selling heroin and selling cocaine. I do know that he has been convicted of both heroin—and I believe he was convicted on the cocaine.

Q All right, sir. Now, on the day of his arrest did you have surveillance set upon a certain residence here in Nashville?

A Yes, sir, we did.

Q And what was the information that you were—that had prompted you to have surveillance set up on that residence?

A I had received information from Agent Jerry Strange of the Alcohol Beverage Commission that Mr. Robert Meadows was in possession of a large quantity of cocaine.

Agent Strange further stated that his information was that Mr. Meadows dealt primarily with women, that they would come to the rear of the house, blow the horn and Mr. Meadows would then come out or motion for them to come in.

He would sell to them and he preferred dealing with people—he felt more comfortable with people that were ex-convicts or had been in the penitentiary before, for some reason. Based upon this information we set up and established surveillance on the rear of Mr. Meadows' house.

We did observe several cars come and leave and he had a large German shepherd where whoever pulled up outside they had to stay in the car or blow the horn until he came out and either escorted them into the house or talked with them at the car and then they would leave.

Q Were the people who came up male or female?

A Predominantly females; I think there was one male, and if I recall correctly there were two or three females.

Q Were there any people who appeared before Ms. Shearon appeared that you recognized or could identify as being known drug users or dealers?

A No, sir, not that I knew.

Q Did you have from your vantage point—could you see the identify of the facial features of the people who pulled up behind the house and made what appeared to be transactions to you?

A No, sir, from the distance we were looking at I could not—knowing Ms. Campbell as I do, I could not identify Ms. Campbell as the one that got out of the car. I could

recognize the cars with no problem. So what we were doing—we had other cars in the area and when the car would leave we would get the tag numbers off the car, if possible, run them and check and see who they were.

When Ms. Shearon arrived at Mr. Wilson's residence, she followed the pattern that had been set up and that we had information on.

The Court: Whose residence?

The Witness: Mr. Meadows'.

She pulled up out back and blew the horn. Mr. Meadows came to the door and motioned for her to come in. She got out of the car and went in.

She stayed approximately five minutes and came back out of the house and got in the car and left. In the meantime I gave the description of the vehicle and the subject—you know, the clothing that she had on to one of the other cars in the area and they picked her up as she left, and run the tag number on the car.

Q (By Gen. Fisher) Did you recognize the tag number before the vehicle was stopped?

A Yes, sir. After we got the listing on the vehicle it came back listed to Mr. Wilson's wife, I believe it was, at the address that I recognized as being his address on Meridian Street.

And knowing the connection between Ms. Campbell and Mr. Wilson—

Q When you say, "Ms. Campbell" who are you referring to?

A Janet Campbell Shearon, the lady sitting on the right next to Mr. Norman.

Q When did you learn—did you learn prior to the stop that Ms. Campbell or Ms. Shearon was an occupant or the driver of that vehicle?

A Not at that point. I suspected it to be her, and then when I was told that she had stopped at the corner of Davidson Road and Charlotte and picked up a male black—and they gave the description of him. And I assumed at that time that it was Mr. Wilson.

I turned on my emergency equipment and went as fast as I could until we finally caught up with them in traffic. And I was directly behind them from probably 40th Avenue where it crosses over I-40 or where I-40 crosses over 40th, until we did stop them later.

At that point when I got behind them I did and could identify Mr. Wilson and Ms. Shearon and did tell the other officers who it was and that we were going to stop them. I felt that they would probably get off at Trinity Lane, and they did.

Q Now, let me ask you this, how long was it after Ms. Shearon left Mr. Meadows' residence was it that she picked up the defendant Wilson? In time and distance how long and how far approximately was it?

A Approximately a mile and approximately five minutes—three to five minutes. She left the Meadows' residence, which is located on River Road. She came through Old River Road to Charlotte. And you are talking approximately a block and a half to two blocks from where River Road hits Charlotte to the closed down service station where Mr. Wilson was standing.

Q Okay. You say it was a closed-down business?

A Yes, sir, it was a service station at one time. It is located at the corner of Davidson Road and Charlotte.

Q Did he assume the position of guest passenger in the car at that time?

A No, sir; at that time Ms. Shearon scooted over—now, this is what I was told. Ms. Shearon scooted over and Mr. Wilson took over the duties of driving.

Q You were told that by one of the fellow officers that was on the surveillance team?

A Yes, sir; that was—at that point we left our surveillance position on Mr. Meadows' house and assisted them in stopping the vehicle.

Q All right. Now, the vehicle was stopped after you had recognized Ms. Shearon and Mr. Wilson?

A That is correct.

Q Were you personally acquainted with Ms. Shearon's drug involvement prior to that stop?

A Yes, sir; I was.

Q And is she known to you from personal experience to be a drug user and to participate in drug deals?

A Yes, sir; she is. I have stopped her in the past when she had left known drug houses and so forth.

Q And was she in possession of drugs when you stopped her?

A No, sir; I did not catch her in possession of drugs at the time. I have arrested her, but not for drugs. I have never personally ever arrested Ms. Shearon for drugs.

Q To your knowledge has she been arrested for drugs; do you know?

A I couldn't say in my own personal knowledge at this time if she has been arrested. She has been involved. I do

know of her involvement with drugs through different individuals and through Mr. Wilson.

Q All right. Now, did you know her prior to this time to be an associate of Mr. Wilson?

A Yes, sir, I did.

Q In what capacity were she and he related?

A At one time we had executed search warrants for both Ms. Shearon and Mr. Wilson in the North Nashville area approximately ten years ago.

Q At the same residence?

A Well, I believe that is the way—it was not my search warrant, but I believe that was the draft of the search warrant.

Q And, of course, when you stopped the vehicle what did you recover from the vehicle in the way of drugs or drug paraphernalia?

A When we stopped the vehicle we just had a car to stop in front of it and both individuals remained in the car. We got out and approached the vehicle and Officer Luna recovered a paper sack. I believe, that was in the floor or on the seat. I am not sure; I did not recover it from the vehicle.

I believe it was primarily in the middle or right under Ms. Shearon's seat. She was sitting more or less in the center of the car.

Q Do you recall the quantity of drugs and type of drugs that you recovered?

A Yes, sir, it was approximately two ounces of cocaine.

Q Two ounces; that is in excess of 30 grams, isn't it? Are there approximately 28 grams to an ounce?

A Yes, sir, we are speaking over 50 grams.

Q Did you observe the containers of cocaine from the exterior of the vehicle as you approached it?

A I did not. You could observe, if I am not mistaken, the sack.

Like I say, Officer Luna approached the right-hand side. I approached the left-hand side where Mr. Wilson was driving.

Gen. Fisher: Thank you, that is all.

The Court: All right, Mr. Vincent?

CROSS-EXAMINATION

BY MR. VINCENT:

Q Officer McWright, you heard Officer Luna testify about where the substance was found in a hearing before, have you not?

A I don't recall if I have or not; it is possible. I have talked with him in the past about it, but I don't recall hearing him testify, but I possibly could have.

Q Now, you received information from Jerry Strange; is that right?

A Yes, sir.

Q Jerry Strange received information from an informant; is that right?

A Either from an informant or one of his agents; I don't know. He is the head of the ABC here.

Q You don't know what particular information the informant gave Jerry Strange that there were drugs being sold at that house; is that right?

A Just like I related earlier, the information that Agent Strange related to me was exactly or basically what I have just stated to Gen. Fisher.

Q You received no other information?

A Not on that particular day. I have received information on Mr. Meadows selling drugs for long periods of time.

Q Now, you did not receive—in connection with this investigation you have not received any information relating to the defendant here today?

A Is that a question?

Q Yes, sir.

A No, sir, I did not, not on this particular occasion.

Q And you did not expect them to come to the Meadows' home; is that right?

A No, sir. I was expecting drug dealers and drug users to come to the home. I did not have anyone in particular in mind.

Q And, of course, Wilson did not come to the home?

A No, sir, he did not.

Q You saw in your surveillance and told of four persons; is that it?

A I can't recall. I have since lost the particular note pad that I kept. It was approximately three women and a man.

Q That makes four?

A Yeah.

Q Now, when this young lady, Ms. Shearon, came to the house did you observe her get out of the car?

A Yes, sir, I did.

Q Did she break any law doing that?

A No, sir.

Q And she went into the house?

A That is correct.

Q And then you saw her come back out?

A That is correct.

Q She had nothing in her hand?

A Not that I could observe.

Q Did she have a purse?

A Not that I recall.

Q So as far as you can tell she came out of the house empty-handed; is that right?

A As far as I could tell she had nothing in her hands; no, sir.

Q And she did not violate the law in any way?

A Well, she did drive without a license, but not—she didn't violate any other laws that I could see.

Q Then as the car left you could see the license plate; is that right?

A No, sir; I could not. I saw the description of the car and of Ms. Campbell and relayed that to one of the other cars that had the ends of the road staked out.

Q And who obtained the license plate; do you know which officer it was?

A I believe it was Officer Al Burrow, but once again, I am not sure. It was one of the officers on the surveillance team.

Q Did they call that back to you?

A Not to me. They called it to the office to have the listing ran. I could hear the number, yes, sir.

Q Did you have the license number run through the computer?

A Yes, sir—I did not. The officer that called it in did. I believe—or they may have given it to me and I called it in to the secretary. One way or the other the listing came back, whichever one of us gave it to her.

Q All right, sir. And you found out the car was not listed to either of these two defendants?

A That is correct.

Q When was it that you determined to stop this car? When in the sequence of events did you make up your mind you were going to stop the car?

A When I found out that it was Ms. Campbell and Mr. Wilson in the car and that they had done the things that I previously described: leaving him on the corner, coming back and picking him up and so forth.

Q And where were you at that time?

A At that time I don't recall. I was enroute to catch up to the car to make sure that that is who the two individuals were that were in the car.

Q And your intent in stopping the vehicle was to make a search?

A Yes, sir, it was, on what I considered to be probable cause to make a search.

Mr. Vincent: That is all.

The Court: Do you have anything, Mr. Norman?

Mr. Norman: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. NORMAN:

Q Mr. McWright, I believe you indicated that you never have arrested Ms. Shearon for any drug-related violations of the law?

A Not that I recall. Like I say, I have arrested Ms. Shearon but I know on two occasions it was not drug-related or didn't prove out to be drug-related, at any rate.

Q You have also stopped her on several occasions leaving drug dealers homes?

A One particular occasion I recall that she was with an individual that we did arrest.

Q You never found any drugs on her?

A No, sir.

Q You executed a search warrant at the residence where she was?

A I can't recall. When I stated that—there was a house in North Nashville and if I stated that I executed the search warrant it was not my search warrant and I don't recall if she was there or not. If I am not mistaken the draft of the search warrant was for both individuals. I am not saying that she was there, and I can't recall because it has been every bit of ten years ago.

Q But do you remember if there were any drugs found in the execution?

A I don't believe that the drugs were found in the execution of the search warrant, but the search warrant was executed.

Q So basically you just have a suspicion that Ms. Shearon is somehow involved in drug-related activities?

A Ms. Shearon has admitted to me on numerous occasions that she had been involved in drugs. It is not a suspicion, no, sir. It is what I consider personal knowledge.

Q What you consider personal knowledge?

A If she tells me that she uses drugs and has sold drugs and has been lucky enough not to get caught at it, I would tend to believe her.

Q When you were surveilling the Meadows' house you couldn't tell it was Ms. Shearon?

A No, sir, I could not. I could tell it was a female white and the description of the clothes she had on.

Q You had no idea who it was that went in the house and came out?

A It was the individual in that particular car that I saw.

Q The car came back registered to some relative of Mr. Wilson's?

A That is correct.

Q So you decided to stop it?

A No, sir, I decided to stop it when I, like I say, found out for sure that it was Ms. Campbell and Mr. Wilson in the car.

Q You just wanted to stop and talk to Ms. Campbell and Mr. Wilson?

A No, sir, I stopped it to get the drugs out of the car, which I felt sure was in it.

Q You felt sure. What facts did you have to know there were drugs in the car?

A The fact that Mr. Meadows is a known drug dealer and the fact that Mr. Wilson is also a convicted drug dealer, and all the other elements. It's indicative of drug trafficking when an individual takes somebody to a bigger man or don't take them, as this case was. You leave them standing on the corner and then you go to the house and make the deal and come back and pick them up. That is just the way drug deals are done, and over the past ten years I have seen it happen time and time again.

Q Officer, if these two individuals had not been in the class of what you call drug dealers you wouldn't have stopped them?

A That is correct.

Q You didn't stop the four prior people that came up?

A No, sir, we did not.

Gen. Fisher: A few more questions, Your Honor.

The Court: All right, thank you, sir, you can stand down.

Gen. Fisher: I would like to ask one more question.

REDIRECT EXAMINATION

BY GEN. FISHER:

Q From the way Ms. Shearon was dressed and from your vantage point and from your observation of the cocaine later recovered, could she have had that cocaine on her person when she left the house—

Mr. Vincent: Your Honor, I object to the leading nature of the question—

Q (By Gen. Fisher)—not to your observation—

The Court: Hold on a minute. Ask the question again.

Q (By Gen. Fisher) Considering the dress of Ms. Shearon, the way in which she was dressed, and considering your vantage point from which you were attempting to observe the traffic at the Meadows' residence and recalling the—what was the cocaine in?

A It was in two plastic packets, two individual plastic—

Q Recalling the size of the package of the cocaine, could she have had that cocaine on her person and you not been able to see it?

The Court: Hold on. I sustain it. Anything could have been possible.

Q (By Gen. Fisher) Could you see her hands as she left the residence and got in the car?

A I could see her hands. I couldn't tell if she had something in her hand.

Q Could you tell whether she had something under her clothing or not?

A No, sir, I could not.

Gen. Fisher: That is all.

The Court: All right. Thank you, sir, you can stand down.

Mr. Norman: I have another question, Your Honor.

RE-CROSS-EXAMINATION

BY MR. NORMAN:

Q Officer, at the what I will call the confiscation hearing—

A Yes, sir.

Q —were you not asked this question: "When Ms. Shearon came out of the house there were no drugs or bags or anything in sight, were there?"

And your answers was: "No, sir, there were not."

A I think that is what I stated today.

The Court: All right, thank you, sir, you may stand down.

WITNESS EXCUSED

The Court: Anything else?

Gen. Fisher: I think not, Your Honor.

The Court: Anything from the defendant Wilson?

Mr. Vincent: No Proof.

The Court: Shearon?

Mr. Norman: No proof, Your Honor.

The Court: Anybody care to be heard?

Mr. Vincent: Yes, sir.

The Court: All right, I will hear you briefly. Let me ask one or two things, though, Mr. McWright, first. As I understand the proof you say that the sack was observable, though not the contents, when the car was stopped; is that right?

The Witness: Your Honor—

The Court: Stand up, sir.

The Witness: Your Honor, I did not observe the sack. I was told that the sack was observable from the outside of the car. The contents—I am sure if it was a small brown paper bag that the contents were not observable.

The Court: All right. And these other four people who left the house before Shearon left were not stopped; is that right?

The Witness: No, sir, they were not stopped.

The Court: All right. I will hear your argument.

Mr. Vincent: I will be brief. This is a stop based on some information that was not disclosed to the Court. That is a fellow-officer rule that I have argued before in this Court pertaining to the Willoughby case. Willoughby and Gates stand for the proposition that somewhere, someplace you must establish probable cause. And that is you must disclose to the Court the information that you have when you decided to set up the surveillance and search.

We don't know what information Officer Strange had or what information the informant gave Officer Strange. We don't know if the information was fresh or not. We don't know what the basis of the conclusion is that there were drugs in that house.

Other than that all that this officer had observed out there is innocent activity, and he stated from the witness stand on cross-examination that he would not have stopped other people.

Now, I don't think that that young lady, Ms. Shearon, is less than a citizen because she had the reputation, according to the officer Billy McWright. I don't think that Mr. Wilson

is forever condemned to be the victim of illegal stops and searches because he has been convicted of a crime.

There was no probable cause. The same circumstances existed for these people that existed for the others.

The Court: Mr. Norman, do you have anything?

Mr. Norman: Your Honor, without repeating what Mr. Vincent said, I will incorporate that into my argument and basically state that that is Ms. Shearon's position. All the information that Mr. McWright had he had no basis for it. It was all suspicion based upon suspicion based upon suspicion.

I don't believe that there was such information that could rise to the level to create probable cause and would ask the Court to grant the motion.

The Court: What says the State?

Gen. Fisher: The Court has heard the evidence. The one thing that was admissible was the hearsay evidence where this officer heard from another officer that he did observe a sack laying in the car as they approached the car. I submit it to the Court on the facts heard.

The Court: All right, I will look over my notes that I have made and I will write an order promptly and notify everybody involved.

Mr. Norman: If Your Honor please, today is also a disposition date, I believe, for Mr. Wilson and Ms. Shearon. If we could have a continuance on that, Your Honor.

The Court: All right, if disposition is necessary, I will set a disposition date in the order.

Mr. Norman: Thank you.

END OF TRANSCRIPT OF THE EVIDENCE